

**U.S. SMALL BUSINESS  
ADMINISTRATION**

**Regulatory Enforcement Fairness Hearing**

**Boise, ID**

**August 23, 2007**

## PROCEEDINGS

[START TAPE 1 SIDE A]

**MR. BERGDOLL:** Good afternoon, welcome to the National Ombudsman Regulatory Fairness Forum. My name is Tom Bergdoll. I'm the Director of the U.S. Small Business Administration Boise District Office. I'm excited and honored that we have the national Ombudsman's Nicholas Owens with us here today to conduct the forum. I'm excited about it, anxious to get started with the forum. Before I do however, I'd like to make a couple of brief comments and introduce some special guests that we have with us.

First thing I want to do is thank the Boise Metro Chamber of Commerce for partnering with us in putting on this forum today. We've worked with the chamber over the years on many different events and projects including two of these Regulatory Fairness Hearings in the past. The Boise Chamber is a tremendous advocate for small business all over the [inaudible]. They were gracious enough to step up again and provide the space for us, the nice equipment, and so forth. So I want to thank the Chamber and I'd like to recognize a couple of the Chamber executives that are here. Nancy Vannorsdel just walked in, the President and C.E.O. of the Chamber. Also Ray Stark, Senior Vice President for Policy and Partnerships. I think we should give them a round of applause. Thanks again.

I'd like to introduce the head table, on my immediate right, Nicholas Owens. He is our National Ombudsman. He's going to be introduced formally in a minute. Norman Proctor the SBA Regional Administrator from Seattle, Washington. I'm going to introduce him formally in a minute. Larry Pettingill, small business owner and Regulatory Fairness board member from Idaho Falls. Dan Piccora, a small business owner and Regulatory Fairness board member from Seattle, Washington. We also have some special guests in the audience today that I'd like to recognize. Peter Fischer is the Chief of Staff of Senator Mike Crapo in Washington D.C. Glad to have you with us Peter, it's been a while. Bob Ford from Senator Crapo's office here in Boise. Brenda Maynard Walters with Senator Craig's office. We have Michael Gifford, Executive Director of the Associated General Contractors of Idaho and he's going to speak a little later. Susie Shaffer [phonetic], Executive Director of the National Federation of Independent Business. Jeff Owen [phonetic], State Director of Idaho Small Business Development Center. Deborah Brown, Executive Director of Capitol Matrix Certified Development Company. I'm sorry; I should have introduced Dan Cantana [phonetic] also from Boise Chamber. He is the manager of the Small Business sub center [inaudible].

It's my honor now to introduce the leader of the SBA for the Northwest region. Norm Proctor was appointed by President Bush to

be the Regional Administrator of the SBA in April of 2004. In this position Norm's responsible for all of the SBA programs in the states of Idaho, Washington and Oregon and Alaska. Norm is a graduate of the University Of Washington School Of Business and the School of Law. Norm's a tremendous advocate for small business. As a matter of fact he served as the regional advocate for several years before taking over the job as the Regional Administrator for the SBA. We're always glad to have Norm come to Idaho. We just wish he'd come a little bit more often. Anyway, Norm.

**NORM PROCTOR:** Thank you, Tom. It's an honor to be back in Boise. I just want you to know you have the best District Director in the nation in Tom Bergdoll and his staff [inaudible].

I come here with mixed emotions because I know you heard I went to the University of Washington. The old Boise is playing the University Washington in the second game and I just want you guys to know the tie that I wore just to kind of get you excited and that sort of thing so. But on a more serious note I love the job that I have being the Regional Administrator for the four states. We call us the dream makers. We help people start a business; we help people expand a business. This is their dream. Today we're here for other issues and some people have problems with federal government money. So I'm going to introduce Nick in just a second, but before I do that I wanted to mention that we also have another agency, the Office of Advocacy. That group really looks at issues before they become regulations or laws, before they become laws. So if you have something that's brewing that hasn't come to law but you know about it, you should contact that office, the Office of Advocacy.

Also, should you need statistics on any type of issue affecting small business; the Small Business Administration has wonderful statistics also in the Office of Advocacy. But here today we have a real champion for small business that have problems with the regulatory issues. We had a hearing in Seattle Tuesday where Nick oversaw the hearing. The room was packed and we had great discussion, it was well covered, lots of interest. Nick was appointed by President Bush in March of 2006. He is the fifth ombudsman ever appointed to that job. He loves it, he gets it, and he wants to help. He's here to help. Also, he's an entrepreneur and looking at his resume I love this one. Yeah, he's from Mississippi and one of the newspapers, no I think ABC News had a special on him that basically said this person is the next generations Mississippian which can be one of the leaders of the country. Today ladies and gentleman, Nick Owens is here and he's here to help. So with that Nick, welcome.

**NICK OWENS:** Thank you. Thank you, Mr. Regional Administrator. I always enjoy an introduction by this good gentleman here. Thank you very kindly and I'm pleased to be sitting at a table with dream makers, so we call it <sub>3</sub>the dream team. Perhaps led ably

by the Regional Administrator. But indeed it is an honor and privilege to be here in Boise. My first time as the National ombudsman. Not my first time to the great state of Idaho. But I always enjoy getting back here and I want to thank the Chamber for the partnership opportunities for the associations. Most of all the small business who have taken time from your busy schedule. I know that the two most precious commodities of small business owners are of course their time and money. So I thank you for taking the time to be here. So hopefully we can address concerns, understand your concerns and take those back to Washington to focus on.

I do want to thank Senator Crapo's office also for the opportunity and the invitation to be here. I always appreciate seeing Bob Ford who leads economic development here in the state for the Senator. Of course my good friend Peter Fisher from the staff. I was driving over here and we were talking about -- Pete was saying what am I going to talk about? He said, "Well, Nick, I know you well enough, you probably ought to just talk about five minutes". But anyway we're going to go a little further. What I did want to say is I surveyed the current entrepreneurial and small business climate in this great country and this fabulous state. There's never been a more exciting time to be a part of America's small business community. The ever-changing dynamic market that we're in is often because of the small businesses and the ingenuity of small business owners. In Idaho you have 46,000 businesses. Of which 45,500 are small businesses. This represents 97.1% of your businesses in this state. It's everyday because of the recognition and leadership of small business owners, that jobs being created here in Boise and across the state and of course the economy is realizing tremendous growth.

The state of America's 25 million small businesses is stronger than ever before. Representing 99.7% of all businesses. But with the success of many members of your Chamber of Commerce and of the state and of the northwest you have success, but you also are faced with challenges. Regulatory and compliance challenges, the ingenuity that small business owner did not come from anybody in Washington D.C. Did not come from the federal government or the state government. Often when I say I'm here from the government and I'm here to help you, it makes folks run out the door. We don't quite do that yet. President Bush has said many times that the role of government is not to create wealth. The role of government is to create an environment where the entrepreneurial spirit can flourish. You can risk capital and you can achieve the American dream.

However, the President also knows that unfair enforcement and the unfair regulations are an issue for small businesses today. So it is an honor for me and as you say you love your job, I love my job. Because I help navigate folks through the rough seas of regulatory enforcement. Often when they're at their wits end of

trying to navigate the bureaucracy of the United States Government. But we're turning toward streamlining regulations. We work closely with the Office of Advocacy in identifying regulations that are adversely affecting small businesses. Because we certainly know that small businesses cannot operate effectively in an environment of uncertainty and confusion. Even more so when you're face with enforcement actions that are unfair and excessive. Examples of issues that my office can assist small businesses with, repetitive audits, repetitive inspections, investigations, penalties, there are excessive fines, and not retaliation. Making sure that you can tell your government both the good and the bad and not fear retaliation.

Often I say that the Office of National Ombudsman is to help entrepreneurs keep more of their hard earned money in their pocket to decide what to do with it. Unfair regulations and the unfair enforcement of regulations cost you your time and your money. According to the SBA's Office of Advocacy, federal regulations alone cost small business owners approximately \$7,640.00 per person per year. That represents about 45% more than it does in larger company; let's say of 500 employees or more. Small companies, small businesses spent four and a half times as much to comply with environmental regulations. 67% more with tax compliance and it's often because they can't afford super lobbyists and consult and accountants to represent their concerns. So we're pleased to be that resource they can turn to help.

I travel the country quite a bit. I've been all over the northwest this week and it's been a terrific week. I've heard a lot from small business about concerns. But the three issues I hear most about from small businesses, their taxes, healthcare costs and regulations. Certainly when you spend more money dealing with the federal government when it's unfair or you're dealing with unfair regulations, it could be better spent to provide health coverage for their local employees. To expand the infrastructure of your business or product line and grow your base.

As you said, I'm the National Ombudsman, but I have the longest title in the agency, which my boss loves to talk to me about occasionally. National Ombudsman Assistant Administrator for Regulatory Enforcement Fairness. All that means is troubleshooter. I liaise on behalf of small businesses across the country with federal agencies, all federal agencies. If you have a comment here today we seek a high level review on that federal agency of your issues. The National Ombudsman does not determine the situations and outcome but is your troubleshooter to work on your behalf. We seek a high level review; usually get a response within 30 days. Thanks to the good work over at the Department of Level, of course and Tom Hicks who traveled down from D.C. and many agencies that we work with. The EPA, the IRS, and the Commerce Department as well, and the

Department of Justice.

In addition to small businesses we also assist non-profit organizations and populations, small government entities, population 50,000 or less. When it's concerns we can't assist you with we'll work closely with the Chief Counsel of Advocacy Tom Sullivan, who is appointed by the President, confirmed by the Senate and is the independent watch dog for small business throughout the government.

For a little history, Congress created the Office of National Ombudsman in 1996 through the Small Business Regulatory Enforcement Fairness Act. It included a fifty member Regional Regulatory Fairness board members. Two of which I'm honored to have the distinguished gentlemen from Idaho Falls. Who's the Chairman of this region, Larry Pettingill and Dan Piccora, who led a great round table in Seattle? Thank you for being here. It's important to get outside that beltway you hear about in Washington and travel the country to listen, learn from and better understand the concerns of small business owners. One important aspect of my job is accountability. That's accountable to the United States Congress. Every year it's my responsibility to issue a report to Congress and rate federal agencies A to F on their responsiveness to small business concerns. The criteria includes quality, timeliness of response, did they truly address your concern, did they just send you a form letter, a [inaudible] letter or are they delving into your concerns and reporting back to us. Compliance assistance, you have regulations in place but are they providing you adequate compliance assistance to assist you in complying with regulation. Non retaliation policies are another area where it's important, again, as I said to tell your government both the good and the bad and not fear retaliation.

I won't be the first to tell you as much as we work and strive to assist, not every issue can be resolved positively for the benefit of that small business. I don't guarantee 100% positive resolution. But I do guarantee you 100% of the effort from our team back in Washington.

I want to give you a few examples of cases which we have addressed. One that is in Seattle, which was three grocers that testified at a Regulatory Fairness hearing that the USDA, had disqualified them from the food stamp program alleging fraud. Well, the small business owners said they did not commit fraud. They contacted our office and we were able to work with the USDA to reverse that decision.

There was a small general aviation business that's here in the northwest was fined \$10,000 for an FAA violation. Small business owner said he did not commit the violation. Well further review, we sought a high level review, they reduced the penalty from \$10,000 to \$100. Well, it wasn't good enough. Integrity and clearing his good name was a priority. So from \$100 we waived to zero. So I can tell you time after time I receive phone calls direct to my office, where

someone produced the tiers in working to navigate their situation. \$1,000 fine, a \$10,000 fine or a \$100,000 fine can cause someone to lose their home, close their business and no longer have a [inaudible] concern. So we take all these issues seriously.

I appreciate the folks from wage and hour I met earlier today. There was an issue in Illinois where a small brew pub that had testified at a hearing that they had worked with a wage and hour division of the Labor Department, on whether the broom master of that business should be hourly or salaried. That small business owner spent over \$7,000 in attorney fees battling it with the Department of Labor. Well, it was a business decision. Should that broom master be hourly or salary? It was resolved in favor of that small business owner. So we're certainly pleased when we can find those types of settlements.

In Georgia there was a shipping company that was fined \$2,000 by the U.S. Customs for an alleged export import regulation. They contacted our office and U.S. Customs admitted it made a mistake and refunded that error. So it may not be an issue that you have a substantive case, it may be that you're just trying to find out about an application. While I say I'm the National Ombudsman, I'm SBA, so if you have a concern about an issue at that agency, regarding an application, we want to be responsive. You may need to try to find a form on an internet, in order to comply with a regulation. We can assist you with that. There's no job too small.

Many years ago former President Ronald Reagan said that -- at that time his view of the economy could be summed up in a few short phrases. That was, if it moves you tax it, if it keeps moving you regulate it and if it stops you subsidize it. When keeping with that premise, I can tell you that regulation should be effective and not excessive for America's small businesses and especially here in the great state of Idaho. So it's our mission to create more of a small business friendly regulatory environment and as a key component of President Bush's small business agenda.

So with that, I would like to recognize Chairman Pettingill and ask you to please make comments.

**LARRY PETTINGILL:** Good afternoon, I would also like to welcome you to the fairness hearing. Thanks to the Chamber of Commerce here in Boise for allowing us to use your facilities. As it's stated, I am from Idaho Falls and I am there for any time, for any reason if anybody would like to call me I will certainly give you my card after this is over with. Because I am enjoying this position very, very much, I have learned a lot and it is always nice to hear from small businesses. I have a short PowerPoint presentation. It's going to be a little repetitive, but I want to give you some information that Nick did not. Again, thanks for attending.

National Leadership for <sup>7</sup>Protecting Small Business, to

make our economy stronger and more competitive America must reward not punish the efforts and dreams of entrepreneurs. Small business is the path of advancement especially for woman and minorities. So we must free small business from needless regulation and protect honest job creators from junk law suits. That's from President Bush, on February 2, 2005.

The National Ombudsman commitment is limiting unfair regulatory enforcement actions, waiving or reducing civil penalties, and increasing compliance assistance and save small business time and money.

How Can We Help from the Office of the National Ombudsman? Conduct public hearings as we are doing here today. Encourage a help you, not got you, attitude. The National Ombudsman Office acts as a troubleshooter between small business and concerns and federal agencies, all 63 federal agencies. We rate all federal agencies and make reports to Congress and that report is available at the end of the year. We just currently got the one for 2006, certainly could get you a copy of that if you would like.

Who Can We Help? I have to remember to operate this thing here too. Okay, if you are a small business, small government entity or a small non-profit organization. If you have comments on federal regulations affecting small businesses, if you are a small business or entity involved in federal compliance or enforcement, we at the National Ombudsman office can help you.

Unfair regulatory enforcement means repetitive audits or investigations, excessive or unfair fines or penalties, confusing paperwork or non-responsive federal employees, threats, retaliation or unprofessional behavior. Trust me Mr. Owens and his staff at the National Ombudsman office is very, very helpful in that regard. He is here to help you. We are here to help you.

Our annual report to Congress summarizes the ONO activities. ONO is Office of National Ombudsman. To identify top regulatory enforcement concerns and best practices. Rate all federal agencies on a timeliness, quality of response, non-retaliation, compliance assistance, hearing participation, written notification and paperwork relief.

What can you do as a small business? You can submit a comment form online, at hearings, telephone, fax, any other way that you would like to get your point to the National Ombudsman's office. In doing this provide a short written explanation and be sure and cite specifics of the citation, the letter, order, fine, penalty, or other information that you might have.

How to File. Fully disclose and make public a specific response to your case may aid others in your industry. Disclosed only to relevant federal agencies, the ombudsman office and the Regional



Fairness Board, a specific response to your case only. It's also disclosed only to the Office of the Ombudsman and the Regional Fairness Board and may be difficult to address your specific concerns. Here are some helpful hints, file a written comment; allow full disclosure of comment to receive faster and better response. Provide the specific details, names, dates, locations, any information that you feel necessary and inform us or tell us of the results that you are seeking. Avoid sending us any legal briefs or court papers, and if you are in litigation consult your attorney before contacting us.

The National Ombudsman, getting a little bit ahead. Okay, here we go. The National Ombudsman does not have statutory jurisdiction to change, stop or delay enforcement action. To process comments not involving federal regulations or federal agencies, cannot help secure government contracts, and we cannot provide legal assistance or advice.

The Regulatory Fairness Board Assistance will hold regional enforcement hearings as we are doing today. Will work with all trade and business groups, we will forward small business comments onto the Ombudsman. We will participate in Regulatory Fairness hearings and we provide input to ombudsman reports to Congress. This is a win-win situation for small businesses. Again I'm Larry Pettingill from Idaho Falls and Dan Piccora is from Seattle. We are here to help you. Do not be afraid to call either one of us. If we can help you and assist you in any way. Here are some useful websites for --

**MALE VOICE 1:** Well, at least SBA.gov.

**LARRY PETTINGILL:** Yeah, SBA.gov, and I have a copy of them right here. SBA.gov, oh, there we go, okay. I won't read them off because they're on the board. So keep in mind we're here to help you. We want to help you and we will go do anything we can to help you. So at this time, turn it over to Tom and he is going to start [inaudible].

**TOM BERGDOLL:** I don't have anything else to say except there are copies of this, the PowerPoint presentation that you just saw. Where are they in back? They're on the front table, on the table in the front.

**MALE VOICE 2:** I would just like to add something to what Larry stated. That even a school district can use the Ombudsman Office. Sometimes school districts have a unfunded federal mandates that could break the back of a school districts budget, go to the National Ombudsman. When you get confusing paperwork or threats, especially when it comes to the threat department, we really want to hear about that. Please if you're expecting an enforcement action or [inaudible] take very detailed notes, who, what, when, where, location, weather, people who were around, witnesses, documentation helps immeasurably. And I got one question, maybe you could address it.

How - why and how do you rate the agency?

**MALE VOICE 3:** The United States Congress said you will rate the agency and that is true. If there's a time that you captured the attention of the federal agency it's rating season, wouldn't you say Tom?

**TOM BERGDOLL:** Yeah.

**MALE VOICE 3:** But truthfully we seek fairness for small business, likewise we must be fair to federal agencies. Overall agencies are doing a good job, being responsive to small business, is there more to be done, certainly, and we continue to work closely with them. So how we rate them, as I stated earlier, it's based on timeliness, quality in response, compliance assistance, do they have non retaliation policies in place, those are the criteria. Anyway, Most of all we want to hear from you, not just a talking dialog, so let's begin.

**MALE VOICE 4:** Okay, let's get started with the testimony. The first witness is Ryan Huesley, with Reds Trading Post in Twin Falls, Idaho. The issue has to do with the Bureau of Alcohol, Tobacco, Firearms & Explosives.

**RYAN HUESLEY:** Good afternoon, I thank you for this forum. Again my name is Ryan Huesley with Reds Trading Post in Twin Falls, Idaho. We're actually Idaho's oldest gun shop. We've been in business since my great grandfather started it back in 1936. After 71 years in business [inaudible], the Bureau of Alcohol, Tobacco, Firearms & Explosives has revoked our federal firearms license. We had a 99.6% success rate, and an error rate of .4% and these were clerical errors that the ATF had labeled willful. The ATF must prove that we committed these clerical errors, these violations willfully to revoke our license. We're now sitting actually about \$100,000 in attorney fees just to keep our license. We went through the appeal process; the appeal process was extremely unfair to say the least. It consisted of the ATF inspector who inspected us, ATF attorney and another ATF employee who all reported back to the ATF Director of Industry Operations who revoked our license in the first place. To my knowledge with speaking dealers, I've spoken with a lot of them and also attorney's who represented these dealers as well. Not many people make it through the appeal process.

After we filed in Federal Court, after the appeals process, the ATF then decided that the Director then labeled us, because of these clerical errors a threat to public safety. They partially revoked our license at that point in time, stating that we could no longer receive any firearms. But we could only sell off the remaining firearms, which the Judge later disagreed with, that we are not a threat to public safety.

In the 2005 inspection, sorry, I'm trying to go through this fast enough. 2005 inspection, we had one inspector covering five years

worth of paperwork. Lately we've been getting two inspectors and an area supervisor from Spokane covering two and a half weeks worth of paperwork.

In our industry right now, from 1994 to 2005 the number of federal firearms licensed dealers in the United States has decreased by nearly 80%. In Idaho alone the number of firearms dealers has decreased by 70% from 2,295 to 682. Between 2001 and 2006 the number of revocations has gone up nearly 6 times.

There's no severity of violations. If I had one person not marked down county, the same repercussion goes for if I had 400 missing firearms. The only punishment is revocations. There's no fines, there's no suspensions, only revocation of the license. I received letters from the Executive Director of Gun Owners of America, the Executive Director of Jews for the Preservation of Firearms Ownership, National Shooting Sports Foundation and the National Rifle Association as well. These are all organizations; different ones have different views whether to abolish the ATF or to reform the ATF. But the main consistent voice is that this is an agency that something needs to happen. They have also shut down our competitor across town, also for clerical errors.

Last thing I want to add is the fact that we also have an online petition of 4,700 signatures to reform the ATF. I also I want to point out that the rate of dealers in the United States decreased significantly. Congressman Bill Gingrich, of Georgia has just announced the other day that the number of firearms manufacturers since 2002 has decreased by nearly 85%. But the budget and the employees of the ATF continue to grow. So I just hope you'll take a serious look at this, in our industry this is very alarming. Thank you.

**MALE VOICE 5:** Mr. Huesley?

**RYAN HUESLEY:** Yes.

**MALE VOICE 5:** Can you provide examples orally of the clerical errors you're referring to?

**RYAN HUESLEY:** okay I did not have a poster up that said, 'Handguns are dangerous around children'. I did not have pamphlets out that said handguns are dangerous around children. I want to point out that these are not laws, they're not ordinances, these are policies. These are policies that continue to change and each time we get a new inspector in, they point out -- they have no procedures. There's no list of what you need to look for. Before it used to be that they would come in and assist you. These are the changes that we made in policy. These are the changes that we made in policy, now it's -- last time they were looking for free trigger locks that we should have had available. On the old forms not having the county down. If you live in the city of Twin Falls, you live in the county of Twin Falls and

so people would just write that down. But these are a lot of the errors that they seem to be looking for lately.

**MALE VOICE 5:** I'm curious, the economy has been [inaudible] the past five years, how do you [inaudible] the number being reduced greatly [inaudible].

**RYAN HUESLEY:** It actually began with revoking the individuals that had federal firearms licenses. Now the trend has um, moved on towards small businesses. They refer to them as kitchen table dealers, individuals who had a federal firearms license and they've either revoked those or chose not to renew their license. This is the same thing that they're moving on to small gun shops as well. And as you can see by unfortunately I've become a national poster child for it. Because of the fact it's .4% and we're already up to \$100,000 in legal fees.

**MALE VOICE 6:** I'll follow up on that. Obviously you're a seasoned business, 70 years in business.

**RYAN HUESLEY:** Yes, 71 years.

**MALE VOICE 6:** Why would an agent -- you have to know longstanding upright business to survive that long and posters are some of the issues at they're coming at? I mean is it an inexperienced agent [inaudible] what's going on?

**RYAN HUESLEY:** No, at first I thought it was just with our business, or possibly just with this area. But looking further into it, back in last year in 2006 they had an ATF reform [inaudible] that went to Congress that got stalled in Senate. Addressing adding fines, adding suspensions and having severity of violations, but it got stalled and at this point this is happening to a lot of dealers. I've been getting phone calls from numerous dealers across the nation. What they attempt to do is they will come in the first time and our audit in 2000 they found violations. 2001 they came back they could not find any violations. 2005 they came back and they found these minor violations and they stat because they can say that it's willful because we have violations in 2000. We were warned, although these aren't even the same violations, we were never even told about these prior, they claim this is willful and justification to revoke our license.

**MALE VOICE 6:** Does the ATF usually have some kind of quota that they have to fill, number of gun owners, or number of guns, or gun manufacturers that they have to fill? Are there some kind of policy to extinguish gun ownership to some extent?

**RYAN HUESLEY:** I'm not sure; they're extremely tight lipped, in the past we've been able to communicate with the ATF inspectors or ATF supervisors. But anymore they're just very tight lipped and just they're coming in to go over our records.

**MALE VOICE 6:** Do you have written testimony or written comments [inaudible]?

**RYAN HUESLEY:** Yes, yes.

**MALE VOICE 6:** You do have that, okay, terrific. Thank you very much.

**RYAN HUESLEY:** Thank you.

**MALE VOICE 7:** Michael Gifford is going to speak on behalf of The Associated General Contractors [inaudible].

**Michael Gifford:** Thank you Mr. Owens and the entire team for this opportunity to day. My name is Michael Gifford. I'm the Executive Director for the Idaho agency that's Associated General Contractors, you may know of our group, 35,000 members nationally, 1,050 members here in Idaho, almost all small businesses that do commercial construction, highways, bridges, office and industrial buildings. [Inaudible] we have four offices in the state here. I'm here today to talk really more about an opportunity than a problem. That's the way we like to look at it. Our subject is that EPA is ramping up storm water inspections and enforcement at construction sites here in Idaho. Of course the goal of that program is to keep sediment out of waterways of the U.S. streams and lakes and rivers. With these inspections there are fines that are issued. But I'm not here today to complain about the fines. We would like to see a two handed approach, which would be A, compliance assistance first and B, enforcement. We know that has to continue. We would recommend a partnership. Phase one would be in the area of education, working hand and hand with the EPA and the AGC to educate contractors on how to comply both with the paperwork and physically in the field, how to install the various measures that keep sediment from going into the stream, lake or rivers.

EPA needs resources to do this and permission from the national office to do this. That's not necessarily the main approach of that agency at this time as we understand it from a national level. Although they have recently signed a partnership agreement with Agency America that has not filtered down to Idaho for a similar partnership at the state level, with their region ten office. OSHA is a model that we can look at. Idaho AGC has had a partnership agreement, a written partnership agreement, and I'll leave that today, since 1996 for enforcement and compliance assistance. There's a full time compliance assistance officer that does not have enforcement rights at the time they're serving in that position so there's no confusion between the two. The Boise area office last year did approximately 300 OSHA inspections at construction sites with nine compliance officers. The 40 general contractors that have signed this agreement with the office did 4,000 inspections on construction sites that they had to turn into the OSHA office. In fact the compliance assistance officer Bill Bankhead is here today. We didn't invite<sub>13</sub> him but he happens to be in the

audience and he could certainly answer more questions now or later about that program.

So, that's what we'd like to ask for, we stand ready to do that. Our safety and environmental director Brent Smith is here today. We recently hired him to put resources on and we're ready to work with the region 10 office of EPA and they have an office here in Boise. We're looking forward to working with them. One other thing I want to draw attention to is recently EPA signed a consent decree with Idaho Transportation Department for storm water violations that occurred and activities that must take place in the future. That was signed in June of 2006. One of the items requires any private contractor who works for Idaho Transportation Department to have the water pollution control manager certification. AGC was the first group to seek permission from ITD to deliver that certification. It's a two-day course in the classroom and in the field. That prime contractor must have taken or received that certification within 12 months of a project starting. So what it really means in the end is that virtually every twelve months a contractor is going to have to retake the same two day class at great time and expense. We think that a refresher course might be appropriate for those who have taken the initial course and just a refresher for any updates that there may be. Time and money is valuable and [inaudible] the agreement, the consent to [inaudible] is really silent as to a refresher course type of activity. We believe it may have been overlooked at the time, not a conscious decision to not allow that. So we'd just like to see if there's a way to get that done and with that I'd just like to say we look forward to working with EPA. That they're local office would like to do that but they need permission from the federal office. Then they need the budget and resources to do that. Thank you again for this opportunity.

**MALE VOICE 8:** Yes, sir. You [inaudible] permission [inaudible] represents the [inaudible] that's permission to have compliance assistance resources available to you, similar to OSHA compliance?

**MICHAEL GIFFORD:** Sure.

**MALE VOICE 8:** Tom Hicks is here from the labor department to explain the benefit to everyone about OSHA's compliance assistance [inaudible].

**MICHAEL GIFFORD:** They would need to have permission to have this type of a written agreement with individual companies to do self-inspections.

**MALE VOICE 8:** Okay. [Inaudible].

**MICHAEL GIFFORD:** Then certainly the resources to have a full time compliance officer say just for the construction industry and participate in those educational activities. So the contractors know

what to do and how to better keep the sediment out of the waterways.

**MALE VOICE 9:** Excuse me, [inaudible]. Does he have anything he want to add to what he's saying here?

**MALE VOICE 10:** I have to apologize [inaudible] the past twelve months [inaudible] with the guard. But Michael has worked very closely with this program and it's very, very successful program. I recommend it stay just as it is and it should be a role model for other federal agencies in my opinion.

**MALE VOICE 11:** We have a representative of the EPA in the audience, Jim Werntz. Would you like to make some comments?

**JIM WERTTZ:** Can everybody hear me? How's that? Good afternoon everybody and to the panel I recognize the National Ombudsman and Regional Administrator members of the local board and Tom for all these fairness hearings. They're really helpful for me, I have been several. As far as just gaining some perspective on how the EPA's rules and regulations and policies is implemented by people and particular small businesses and how we can continue to improve. I want to echo or basically agree with Michael Gifford of [inaudible] general commentary on approach we have been taking in Idaho. We have a long history over the last five years of working with AGC and the small business development center on figuring out how to do more compliance assistance on [inaudible]. It's a major priority in Idaho as it is nationally, because it's a high growth state, a lot of construction. One of the top problems in the state is sediment affecting water qualities from run off on construction sites.

So we've been pretty collaborative and frankly this OSHA model that Mr. Gifford talked about is something that he's brought forward several times since 2004. [Inaudible] exactly where I sit, but I'm the Field Office Director for Idaho, which is part of region 10, EPA region 10. So we do have a good history of collaboration. We do have major problems with storm water in the state. We've invested heavily in compliance assistance. It's not appropriate for me to ask for resources for doing the kind of work that they're proposing. However, I do think the ideas and the implementation that OSHA's had is something worth exploring. Nationally, I'm not sure if Michael touched on this but there is an experiment in Colorado for doing more of this type of program, which will be evaluated at the national level by our compliance [inaudible] office. And we're keeping a close eye on that because if that shows promise we think that might be a way we can get more attention and more resources to do a more collaborative partnership [inaudible] compliance assistance. I was very appreciative that Mr. Gifford acknowledged that enforcement is a part of the package. We are a regulatory agency and that's going to stay there. But anything we can do to get environmental results, [inaudible]. Thank you.

**MALE VOICE 11:** Question for you. How do

contractors adequately police themselves in your opinion?

**JIM WERTZ:** Are you asking for the history or for currently?

**MALE VOICE 11:** Both

**JIM WERTZ:** Historically no, I don't think. But I don't think it's entirely fair to say they haven't. The storm water regulations have been around since 1990, the requirements have been phased in. In fairness, they can't be expected to know how to meet regulatory requirement that's not being enforced. So we came out and gave two years of notice in region ten here that we were going to be doing enforcement, [inaudible] enforcement and embark on compliance assistance effort. Where we went around the state and did over 200 outreach activities in the last five years. After that two years was up we did start our inspections and enforce. Which I think helped bring more and more people, more and more of the agencies clientele and people that aren't even members of AGC, into awareness it was a federal requirement. If you're going to develop more money for the land you need to pay attention to storm water runoff. So we're not there yet. We're not there yet. We are going out and seeing compliance at all of the construction sites. But [inaudible] and move our resources elsewhere. We're finding contractors in the state who don't believe that there's any federal requirement for this kind of work. So there is some education left to do and frankly we need the agency and the other parts of construction industry to work with us. Because we can't get their people to our meetings so we need it [inaudible].

**MALE VOICE 12:** Do the contractors have [inaudible] to that?

**NICK OWENS:** I would say that in working together. That's why we're interested in the OSHA partnership model. If you give a general contractor, which may control 30 to 40 sub-contractors on a site, if you give them a path to work directly with EPA on self inspections and a way to work to collaborate together, that's when they drop the fear of enforcement and work towards implementing the desired result. Again, that's what we've seen in the OSHA model is that these 40 general contractors in Idaho can work with the compliance assistance officer for OSHA. They can actually call Bill and say how I should do this scaffolding and not fear that they're going to have an inspection right away. But they have to turn in on their weekly inspections to Bill and also an annual report. So I think that we can control a lot more of the market if we could have that sort of written agreement and formal resource in place. So, yes, we have a ways to go in this market and we're trying to accelerate that process.

**THOMAS HICKS:** Thanks Nick. My name is Thomas Hicks, I'm from the U.S. Department of Labor in Washington the office involved with these programs is good, but feel that OSHA program is getting a lot of positive<sub>16</sub> comments. But four or five years



ago we had the same situation where we were trying to have enforcement people involve in compliance assistance and we discovered that it didn't work. We need to have full time people in every region of the country providing nothing but compliance assistance. That's what OSHA decided about four or five years ago to have what we call Compliance Assistance Specialists. In some states we have more than one or two depending on the size of the state. But OSHA also has what is called a consultation program. These are private groups that go out to a site, a construction site, work site and they provide a safety evaluation for small business owner or any business owner. If you get that safety evaluation and you feel you correct any problems that that consultant has found with your business site, you get sort of a free ride from OSHA for the next year; on any violation that you might have had that wasn't viewed during that period of time.

OSHA also has a partnership program that exempts you from an inspection. So there's several programs that I think are going on with the agency and the OSHA representatives in Idaho. When I get back to Washington I'll let the OSHA people know that they got positive comments. If EPA needs some help from OSHA in terms of putting together a program and EPA in Washington, I'm almost absolutely sure that the OSHA people there would definitely provide assistance. Thanks.

**MALE VOICE 13:** If I could add one comment there, the current OSHA partnership gives the general contractor an agreement with OSHA, the Boise office for three years?

**TOM HICKS:** Right, three years.

**MALE VOICE 13:** That is under a little bit of attack right now, it's being reviewed to shrink it down to one year and change it. We feel like we're trying to fix something that's not broken [inaudible] that message back too, that that ones not really broken, so I don't think it needs to be fixed.

**TOM HICKS:** Right.

**MALE VOICE 13:** Okay.

**TOM HICKS:** Yeah, but that consultation program is something that's very, very big at OSHA. They meet every year to talk about the consultation - are you on a consultation [inaudible]?

**MALE VOICE 13:** Compliance Assistance Specialist.

**TOM HICKS:** Well, you probably know about it more than I do.

**MALE VOICE 13:** Right. It [inaudible] a type of program where we have contractors, Boise State University has that contract right now. They have four contracted employees that go

around the state at the employer's request, okay, to come and look at their business site. We have general industry, logging or construction. As soon as that facility is looked at, the OSHA, the enforcement guys have to back off because they raised it and said we need some assistance here. They're taking a proactive approach. That's a very good thing to do. They do not talk to the enforcement people at all, that would be a problem, would it not? So what they end up doing, if we need to talk to those folks, normally we've got to go to our regional office and have a person then talk back down to those people. This works out very, very well. Right now there's a back log of about four or five months for their services. It's used that well, and then if [inaudible] Compliance Assistance -- here is a prime example and this is very helpful.

A construction company, non AGC member asked me to come out to a construction at a Tread [phonetic] Myers store and look at some internal construction taking place. I went out there. The store manager is scared to death. Here comes OSHA, time out, I don't do enforcement. Here's what we're going to do, and then he was relaxed, he took notes, he learned a lot for that inspection. I walked away knowing these guys are going to take care of the problems and they're also [inaudible] violations. So it's a very, very good program. If I could echo please for [inaudible] we don't need to change this program. Okay, it is not broken. Now if you want to break it, break it, but there's no need to do that. Let's take this success and use that in other agencies. Thank you.

**MALE VOICE 14:** Thank you, sir. Thank you for the dialog. We certainly appreciate you for being here. We have a success story of OSHA's compliance assistance program working well and it certainly could be replicated in other regulatory agencies as a solid progress [inaudible]. So we will certainly take that back to the EPA in Washington. Gentlemen, did you say [inaudible] ask for resources from the EPA? Yes, sir, so you're not in a position to ask for resources, but has this been discussed with EPA in Washington [inaudible]?

**MALE VOICE 13:** I thought I'd come so you could hear me. Yeah, what I mean by that is that we're allocated resources by Congress for specific work and it's not appropriate for us to lobby for resources under any circumstance. The approach, yes, it's been talked about and as mentioned there's a pilot program in Colorado that we're very interested in. We've managed in Idaho to peel some of those enforcement resources off in order to build this compliance assistance program that I discussed earlier. So we're doing a lot, Idaho has some of the largest non compliance assistance in the storm water sector in the United States and we're part of that. So we're working in that direction. Whether we could get to the OSHA model, which has quite a few FDE's [phonetic] for positions associated with it that's the challenge. Thank you.

**MALE VOICE 14:** Okay, thank you and certainly Congress directs federal agencies to have adequate compliance assistance resources available for small businesses and we will share those concerns, so thank you.

**MALE VOICE 15:** This comes very similar to our topic. I work in [inaudible] and we have Intel, which is OSHA [inaudible].

**MALE VOICE 16:** Yes, for mining, right.

**MALE VOICE 15:** They have a small business program, but it's nothing like what you just discussed. Is there any way of getting them to adopt that type of program for the small business, to be sure that safety of the small operations that are operating [inaudible]?

**MALE VOICE 16:** Yeah, I think creative an office of small mines that I thought was doing something very similar to that and apparently they're not doing it anymore, the region. Let me keep [inaudible] business [inaudible] and we could talk about it.

**MALE VOICE 15:** We've already [inaudible].

**MALE VOICE 17:** Art, why don't you come on up and speak next. Art Sappington, Independent Miner from eastern Oregon, Baker City area.

**ARTHUR SAPPINGTON:** Yeah, Baker City, Hells Canyon. This is my first time doing this type of stuff. What I fighting about is primarily with [inaudible] but the Orion Mine being a small mine and construction, deals with a lot of the federal agencies and the Forest Service [phonetic] is the lead agency because we are on public lands. Which we're doing and we have been commenting with Nicholas's office particularly on the bonding issue that we had. But it has expanded because they've ignored in that portion, the environmental assessment document, which is prior to that. We have been notified by environmental groups in Portland that they intend to sue the Forest Service for approving on our plan of operation as soon as we come into compliance and agree with the bonding criteria. I've looked up the E.A. and they've already filed and there are 49 mining operations on the National Forest that have been suspended, not to the fault of the miners, but to the fault of the actions of the Forest Service. In particular to the faulty actions of the legal staff defending the Forest Service in the 401 suit with the Clean Waters Act.

This also brings up, which I was hoping the guy Michael was going to be here to testify verbally. But we have his documents in writing that pertains to the Clean Water Act and the enforcement that it is creating in the environmental assessment and the cost of these operations that are resulting in frivolous lawsuits. We are finding that the forcers have on the national policies, from the national level down but not getting to the regional level in support of the mining, of the miners claims. But that on the local level and by individual

employees on the force, there are inappropriate interpretations of the rules and policies of the Forest Service that are in direct legal conflict with the Constitutional law and the USC codes stated by Congress.

However, we end up, as small businesses, spending money anywhere from \$75,000, which the Orion Mine spent to defend against its last action on the plan of operation that was suspended. To anywhere to half a million dollars if it goes beyond the ninth circuit court. Then once you win you actually still lose because you've spent the money and there's no repercussion or no cost for the agency personnel to set us up in such a manner for these lawsuits. We're trying to find not only with Nicholas Owens on his agency's has helped us immensely, particularly with the last letters on the DEQ and EPA conflict. Also the latest one is with the forest Service on the road closures. The Forest Service was closing the road to the Orion Mine, the access road and then declaring that the road that would terminate at the Orion Mine would be the public access. The road the Orion Mine had from 1903 which comes under 4077 law, roads both in and out for two different directions. Showing that to them and showing them the letter that we intended to send over to Nicholas Owens, resulted in our road being replaced in the National Forest Access map.

So we are making some benefit, some progress, but it's one piece at a time rather than going through and doing the whole thing at one time. So it's a continuous process that small miners, which are one and two man operations, four man operations that have no employees. We can't afford that, because when we win we still lose and we're looking for some major or some [inaudible] avenue that the EOMA, the Eastern Oregon Mining Association, who is paying this bill, can receive funding back into this legal pool to fight for these small businesses throughout the whole northwest. Because now we have expanded on the Forest Service stuff not only for the mining operations, but also for the ATV users, for the livestock users and for snow mobile'ers as well as for access for handicap access for recreational hunting and fishing within our National Forest. Which is new. All this has come out since January and I want to thank again for Larry Pettingill and Nicholas Owens in January attending the Eastern Oregon Mining Association's meeting, because that opened up a lot of peoples eyes. We're trying to get more of our folks and we're sending more to you and we're getting there. But as he says, unlike other forest uses, miners have a possessorary property rights within the forest and a special protected status under the federal law. Under the statutory scheme that's inconsistent with the miners rights for the foresters to impose these regulatory burdens and delays in the context where, the agency finds that there's no substantial disturbance of the resource within its preview.

Presently, I just found out about the advocacy office not a month ago and particularly the Forest Service is now reviewing 261, the

rule 261 criminalizing mining activity on the National Forest. Bill section 261 actually states that it doesn't pertain to the mining law. But then 261.1 and 261.2 specifically are written for camping and occupancy of mining claims. We requested from the Forest Service to reopen their comment period, because we did not find out about it until after the comment period. They had stated in the Federal Register that they had contacted the [inaudible] operators and the small mining associations and yet the small mining associations and Tom Curdell [phonetic], whose emails that I have sent to your office, was notified by the National Mining Association, which is the large mining company. It's not a small mining operation, but for the large organizations. He was notified by them. By the time I was notified the comment period had been closed for two weeks, so we were not able to comment on it. When we tried to get that to reopen and trying to find out whether there was an economic impact study done on that as it pertains to the small business, we was told that the Forest Service had declared that it was insignificant.

Five thousand small mining operations producing a minimum of \$20,000 a year income in just Oregon alone, multiply that by eleven states. You multiply that effect within that economy; you definitely go over the hundred million dollars criteria for the Forest Service to consider that economic impact. Thank you.

**MALE VOICE 18:** Question for you. Getting back to the [inaudible] the cause of the environmental group's civil lawsuit against the Forest Service, the Forest Service is now clamping down on the mine [inaudible].

**ARTHUR SAPPINGTON:** As a result of the lawsuit the court vacated the plans of operation. Without a plan of operation you can not operate on the public lands, supposedly. However, the Congressional law states that Congress declares that we are allowed to operate and that there will be no delaying of, no let me read it. I'm better at reading this stuff. Under the rights the mining claims, the United States shall be subject to [inaudible] the right of the United States to manage and dispose of [inaudible] service. Therefore [inaudible] subject to location, any such mining claim shall also be subject prior [inaudible] of patent to the rights of the United States permittees and licensees to the use of such surface, therefore as may be necessary for such purposes for access to adjacent lands. It also states that by the U.S. Circuit Court under Shumway [phonetic] that the forest service lacks authority to repeal the mining law by the regulations and unreasonably restrict the mining rights and that's what they're doing by the court, by the environmentalists filing against the court the Forest Service not defending the miner's rights in court. Therefore the court vacates the plans of operations and states that they can not operate as a result.

**MALE VOICE 19:** What <sup>21</sup> would be the remedy that you

seek?

**ARTHUR SAPPINGTON:** One is to establish a standing for those miners in that court case, because that court case did directly affect the miner. It's the only time I've ever understood where a court can pass a decree that affects a third party and the third party does not have standing in the court. Then when we've taken those and we had that one in the ninth circuit court right now, and I'm sure that will be overturned in the ninth circuit court. But in the meantime of getting it to the ninth circuit court the miners lose two years of income production from their operations.

**MALE VOICE 20:** So, the Forest Service just give up or they [inaudible] have a budget or them in collusion?

**ARTHUR SAPPINGTON:** Collusion, conspiracy, it has the appearance. We actually are questioning and that's some of the stuff that the letters that we have written to Nicholas Owens, to the Washington D.C. office on that particular issue and Tom Brockall [phonetic] is with [inaudible] mining district from central Oregon and he's writing one on occupancy and that is a key issue, yes. That they are trying. There is an asserted effort not at the national level, but on the local forest and on the regional forest policy, unwritten policy to remove all small mining operations. Right now in Oregon there is one hard rock mining operation on the National Forest, the Orion Mine, we're it and we're struggling for survival.

**MALE VOICE 21:** [Inaudible]?

**ARTHUR SAPPINGTON:** Environmental political pressure, yes, and under the EA that I'm referring to on ours, they wrote about a spotted owl habitat and the fact that our mining operation will potentially affect the spotted owl. Except for the problem is our particular mining operation was burn out in 1984, so there's no trees. The tallest trees we have around our mine within five miles, I can touch the top of it. There's not spotted owl, but yet we have spotted owl criteria written in our mitigation plan of our plan of operation. We stated in our plan of operation that there's no endangered species, but yet we have mitigation criteria written for endangered species, not only for the spotted owl, but also for a cat and a frog, none of which are in that drainage and a bowl trout. Bowl trout cannot survive in a [inaudible] where we are particularly at because of the natural water toxicity. It has natural arsenic level that exceeds that for that of the fish to live and the water that's actually coming out of our operation because of the operation decreases that so that just below the culvert where our water mixes with the Amelia Creek there is bowl trout. We shut our water off completely the bowl trout goes down stream. So is there conspiracy? We're looking for answers and we're looking for a way of obtaining those answers and one of them I find out now is the advocacy office can do a review on these rules as they're being

presented. And Tom Kischner [phonetic] has written that the two rules that they are presently writing are illegal by mining law, but they're still writing them. The rules Shumway stated that the Forest Service could not negate the mining law by writing the rules. The rules that they wrote that negated that mining law is the 228 rules and I'm trying to figure out from the advocacy office how to reopen those rules to get those rules to address the mining law and the Congressional policy for minerals extraction on our public lands. Once we do that then we'll also be able to get them to readdress the policy that Congress has for national forest for fiber production off of our forest as well, which is the other resource. National Forests were founded for timber production and water production that is not what they are doing. They are not producing timber anymore, they are basically with this road, you know that is going on, they are turning it into a park. That's what folks told me, I said no, they're not turning it into a park; I've worked for Bohemian Lumber Company years ago when they were still in business. We logged the park; you're not logging forest now. So our national forest are turning into preserves and when you turn them into preserves you decrease the economic viability, our core resource and without those core resources coming off of our rural communities our cities aren't going to function, because they're going to have a harder and harder time.

**MALE VOICE 22:** Mr. Ss, thank you for being here.

**ARTHUR SAPPINGTON:** Thank you.

**MALE VOICE 22:** Thank you, it was indeed a pleasure to visit Baker City and meet with the many members of the [inaudible] Mining Association. So I appreciate the update where we are as it relates to the impact of [inaudible] mining, in addition it relates to timber. Recently I held a roundtable in Washington with small timber businessmen from Oregon and Montana and Idaho and the northwest, so that's the area where SBA is focusing more to be an advocate for these small timber operations with the BLM as well as the US Forest Service. I appreciate your comments on that. I'm from the great state of Mississippi; from Mississippi to Montana timber industry is a lifeblood [inaudible] a family way, so thank you.

**ARTHUR SAPPINGTON:** [Inaudible].

**MALE VOICE 22:** Yes, sir, thank you.

**MALE VOICE 23:** I believe that concludes all the testimony by individuals that are here in the audience today. We do have some other comments, most of which are related to the testimony that's already been made. We'd like to have the Regulatory Fairness Board Members read these comments into the record before we go. Okay, the organization of the company is the Jews for the Preservation of Firearm Ownerships, Incorporated out of Hanford, Wisconsin. Eric Zelman [phonetic] to the Bureau of Alcohol, Tobacco, Firearms and

Explosives, his comments are, "The ATF has altered the meaning of willful to fend its own interpretation. There are no fines or suspensions for dealers; their only recourse is revoking their license. The ATF have no written procedures or guidelines for dealers. They are enforcing policies that are constantly changing and different inspectors have different interpretations. The appeal process consists of an ATF employee who reports back to the Director, who revoked the license to begin with. This is not a fair process. The ATF demands 100 % compliance in their inspections, no severity of violations the ATF will nitpick over street, abbreviate St. or versus street spelled out, or Y or no versus yes or no, everything is citable offense from not having trigger locks, the youth handgun safety act posters or pamphlets. Congressional representatives are excluded and not allowed to question or intervene with the ATF." End of quote from Jews for Preservation of Firearm Ownerships, Erin Zelman [phonetic], is the contact person.

**MALE VOICE 24:** Next comment form is from the Gun Owners of America and contact name is Larry Pratt, his title is Executive Director. The agency in question is the Bureau of Alcohol, Tobacco, Firearms and Explosives; contact person is Michael J. Sullivan [phonetic], Washington D.C. Into the record, "The ATFE has resisted operating transparently with procedures to guide federally licensed firearm dealers and others involved in the firearms industry. They are currently involved in a campaign to put dealers out of business. One of the most infamous tactics used by the ATFE is to revoke dealer's licenses because of so called willful violations such as abbreviating Baltimore, city or county as B-L-T-O. The ATFE should be enjoined composing as a law enforcement and revoking -- as a law enforcement and revoking federal firearms licenses until they have published procedures for dealer compliance. Written procedures should also be required before the ATFE moves against manufactures. The Aikens Accelerator [phonetic] is a case in point, for several years the Aikens Company was allowed to market their product as an accessory for firearms then they reversed themselves and required that all of the product be recalled from the market, no compensation. The law enforcement agency should set the example by keeping the law itself operating against the firearms industry without written procedures does nothing to keep guns out of criminal hands, but it clearly makes it more difficult for Americans to exercise their right to keep and bear arms. Namely no firearms industry, no guns, no second amendment." End of comment.

**MALE VOICE 25:** This comment is from Moore's Grocery, Incorporated, Notis [phonetic], Idaho. The contact name is Pamela A. Hunt, who is the Secretary Treasurer. Also federal agency name is the ATF. I quote, "Because of ATF Moore Grocery is no longer in business. My store closed its door in October of 2003. ATF took my FFL, Federal Firearms License, because of straw sales, stains and



paperwork not done right. Ralph Lambert [phonetic] and Steven Rebie [phonetic] performed straw sales under different names. ATF did audits of paperwork; they recorded our meetings without our knowledge. When I gave up my FFL, they told me I could only sell my inventory of guns to one or two licensed dealers, resulting in a loss of \$120,000. When the store closed I was told I couldn't tell the public or news it had anything to do with the ATF." End of quote.

**MALE VOICE 26:** Next comment is from the Native American Services Corporation, contact name is Mathew James [phonetic], he's the president/owner, it's to the Small Business Administration, agency contact person is Tom Bergdoll. We have a full page here. "NASCO would like only to comment on the compliance action taken by the SBA office in Washington D.C. to disallow our mentor [inaudible] agreement that was put together with the Washington Group International and started in 2006. You could look at the attached documentation to get an idea of NASCO's complaint. Basically the bureaucracy in Washington D.C., we only correspond by letter and would not allow NASCO an opportunity to question their decisions or solicit for a face to face meeting. As you can see the attached documentation sent to NASCO by the SBA points out our "deficiencies" in our mentor protégé agreement. However, these deficiencies in the attached letters are more opinion than a thorough investigation, having viewed our proposed agreement against the current SBA guidelines. This is not only our opinion but a legal team upon which NASCO spent in excess of \$8,000 trying to get a meeting in D.C. with someone to explain their position. To this day we have not had the courtesy of a phone call, which seems somewhat unfair, not inline with the mission of the SBA. The actual drafted agreement should have been the basis of their decision, not the opinion that WG was not a good company to team with, that is our decision. The SBA's job is to ensure the agreement as a written [inaudible] of criterion; this is not subjected to opinion. And by the way the SBA in D.C. did send a retraction of some comments they had sent regarding Washington Group business practices, and the state of their relationship with the federal government. In one letter the SBA determined that WG was debarred from doing work. With WG being one of the largest businesses in the nation and really supporting SBA Boise each year how could these comments have been put on paper? So with that example was there only really any amount of time put into our actual agreement? What type of review did NASCO really receive? Was it by a competent person who actually takes into account what their decision will impact someone's businesses and livelihood and those who are employed by that company? The MP was a big portion of our business plan for 2007-2008, so I didn't take their half hearted haphazard comments for a decision lightly. Unfortunately I don't have one million to take on SBA in D.C. or I probably would have. I would like to talk to the authority who has communicated with Boise district

SBA in a determination and try to get an understanding of their basis. Like I said their letters and subsequently the letters sent to me by Idaho SBA have no legal standing in conjunction with the SBA's own regulations. And as previously mentioned WG was on the verge of filing a large lawsuit on the SBA for character damages, so I think it would be good to have this investigated. I would like - still like to talk to a person of authority who can explain to me through SBA regulations why our NP agreement was deficient. Just a note, NASCO uses the same template for this NP that we used on our NP agreement with the Shore Group; the NP with Shore Group had no problem passing SBA so I need to understand what is wrong with it now. If at all regulation before and to my knowledge they haven't changed, so it is apparent that either bureaucracy is involved, someone didn't like WG for some reason, I think NASCO was a casualty of that, obviously with their retraction D.C. made a mistake in their evaluation of WG, so there should be recourse for us to continue down the approval process and get our NP relationship going. The SBA has cost NASCO millions in opportunity and growth in denying us the assistance we needed from a reputable company who has always helped the SBA when asked." End of comment.

**MALE VOICE 27:** This comment is from Guy Michael [phonetic], miner and member of the board, Eastern Oregon Mining Association out of Durkee, Oregon. Signed Guy Michael. "I will email my comments to Tom Bergdoll, District Director of the SBA in Boise. The summary of my comments are that EPA and Oregon DEQ do not seem to realize that EPA has approved of a permit system that is outside the federal jurisdiction and DEQ may be issuing this permit to protect itself from too many lawsuits. I do not know exactly however, there is no statutory authority in the state law or federal law for implementing the MPDES permit system from the Clean Water Act in state jurisdictional [phonetic] waters." Signed, Guy Michael. End of quote.

**MALE VOICE 28:** I introduced Peter Fischer earlier the Chief of Staff from Senator Crapo's office in Washington, Peter were you going to make a comment?

**PETER FISCHER:** The only thing that I would like to say is that Senator Crapo was privileged to sit on the focus committee on Senate for a couple of years recently and [inaudible] in America the value of small business affecting [inaudible] State Department of Commerce [inaudible] Idaho [inaudible] specializes in [inaudible] and we really value our partnership with the SBA particularly [inaudible] great champion for [inaudible] so thank you [inaudible].

**MALE VOICE 28:** [Inaudible] Peter, can we do a success story? Bob Ford is here from Senator Crapo's office in Boise and he has worked with an individual Marv Haginmark [phonetic] from Idaho who contacted Nick's office for assistance. Marv wanted to come

today and tell about his experience with Nick's office, but he's not in town and he asked Bob if he would just make a couple of comments for him.

**BOB FORD:** Thank you, Tom. Before I start, Raymond Maynored [phonetic] from Senator Craig's office worked on this project too and I should probably ask Raymond to come up and sing a duet with me, but we might run people out of here fast. But nonetheless before I begin I would like to I guess reemphasize a couple of things that Peter touched on, normally got an excellent working relationship from his office here and for a number of years and look forward to continuing that. Also on behalf of Senator Crapo's office we were pleased to be able to offer Larry Pettingill's name in nomination for board. Working with Tom and we're pleased and hear good things about his efforts, so congratulations on that and thank you.

Very quickly I would just say that first part of last year we had a gentleman by the name of Marv Haginhorn [phonetic] from the Haginhorn Group here in Meridian contact the Idaho Delegation. Like I said [inaudible] and I both were contacted and work on this together. Marv was an importer for small what he called k class work trucks, what we would call two passenger four wheelers. They're the little side to side four wheelers that have a little pick up box on the back that you see landscapers, you know here in town using. Marv would buy these used in Japan, bring them over and recondition them and resell them and he had a pretty good business. They were being listed at a zero tariff rate because they were not suitable for on road use. Well, one morning a customs inspector and I think Nick knows this story better than I do, a customs inspector in Long Beach, California woke up one morning and decided for whatever reason, he didn't like these being imported with no tariff. And that they were in fact suitable for on road use.

Well, one morning a customs inspector and I think Nick knows this story better than I do, customs inspector in Long Beach, California woke up one morning and decided for whatever reason he didn't like these being imported in no tariff and that they were in fact suitable for on road use and that's when our issues started with Mr. Haginhorn. He contacted the delegation and Brandon [phonetic] and I worked together on this and we put together a delegation letter to U.S. Customs, but as is their custom you might say, we got a lot of paper back in return and not a whole lot of action. They were very capable of feeding back all the same information that we already know but they were seemingly incapable of making any new determinations. Well, along the way I suggest to Marv Haginhorn that he contact Nick's office the ombudsman, which he did and Nick weighed in a number of items. I don't even know Nick how many letters you wrote, I think I have four or five in my file, which is about that thick. But I guess you sum up a rather lengthy story, and this did go on for a number of months, not

only with the Idaho delegation sending letters it made a difference, in my opinion and Marv's opinion to have the Office of the Ombudsman also sending letters to these federal agencies. At one point we had not only two offices of U.S. Customs but we had EPA we had USDOT and others all engaged in this.

Now I wish I could report an outstanding success story, we did, I guess, beat the federal agencies back part way. We didn't get everything that Marv wanted but to the best of my knowledge, and Brandon correct me if I'm wrong; he's still in operations, still importing these trucks.

**FEMALE VOICE 1:** [Inaudible].

**BOB FORD:** He's out of town, yeah. Well, you never know, but he did get a partial agreement and was still able to import these trucks with some minor modifications to my understanding, but he was most pleased when I contacted him, Nick of your efforts. Very, very pleased with what your office did and would wholeheartedly recommend any small business being faced with maybe an overzealous or overreaching enforcement to contact the Office of the Ombudsman. So with that, thank you for what you do, and personally I would have no reservations in referring any small business to - to you, so thank you.

**MALE VOICE 28:** Thanks a lot, Bob. We just wanted to have Bob share that with you so you could understand some of the things that Nick does, and help us spread the word. I don't have anything else, and I don't think, Sam?

**SAM ARTIS:** Sure.

**MALE VOICE 28:** Sam Artis is with Washington Group International, which is the mentor firm that we refer to in this letter from Matt James [phonetic] from NASCO.

**SAM ARTIS:** Part of the issue that I want to bring up is not to go into the meta-protégé application but it is part of the application problem in that process and that application went in two years prior to the expiration of their 8A status and earlier on your program you had a slide about who your constituency is and that constituency is the small business community rightfully so. Then you parcel it out after that, but it conveniently omits large business. I'm the corporate small business liaison officer. I get paid a lot of money to manage the small business agenda for our corporation. I do it all across the country. Part of the problem with this 8A application is that I'm not allowed to talk to the Ombudsman, I'm not allowed to talk to Advocacy, I can only go to the District Office, the decision that's made at the national level is not appeal-able, and there's absolutely no dialog. It's like talking to a garden hose 3,000 miles and you're not ever allowed to actually speak to anybody behind the curtain, ever. No issue with the district offices,

they do the best job they can given the fact that they're the interlocutor but they - they can't get me or my 8A contractors an audience at the national level, so we never understood why it was rejected. We wrote them a letter pointing out that we were never debarred, and we ultimately did get a retraction on that, but the ultimate answer also says that it's not appeal able. So I would suggest that your constituency ought to include at least a small business liaison officers of large businesses, that's what we do; I do it for district offices all across the country. I spend about \$450 million dollars a year on small businesses, I am actively participating in mentor protégé programs in defense in energy and yet I can't get a protégé into the SBA 8A program because I'm not considered a viable mentor, so. Yet, I can't get a conversation with anybody on what it would then take to make me a viable mentor in the 8A program.

**MALE VOICE 29:** I certainly appreciate that. I'll tell You my first response is disappointed to hear how that was handled and I take it serious, certainly that's why I'm here to hear concerns of small businesses. We say small business, you're part of that application processes has been for protégé's and certainly you're in the purview of our office, contact me any time. But our administrators will take it serious to make sure - he's been on the job about a year and I think Nick will agree, outcome, results oriented in taking care of our customers, our customers whether it's contractors, whether it is lenders, or the loan recipients of the agency. We take it serious to make sure there's responsiveness and certainly that's handled appropriately and based on the information there it appears there may be other issues that we need to address. I will say in the Office of Government Contract Business Development is undergoing a review in making sure that our processes are in fact effective and that there's no backlog in other delays that may hinder the opportunity for small businesses to develop a mentor protégé relationship, which is a terrific program...

**SAM ARTIS:** It is and we would like to have participated.

**MALE VOICE 29:** Yes, sir, well we certainly will follow up with you very soon.

**SAM ARTIS:** Okay.

**MALE VOICE 29:** Thank you, sir.

**SAM ARTIS:** You bet, thank you.

**MALE VOICE 29:** And in closing I want to thank you all for being here, I certainly appreciate again the small businesses that were here, also the gentlemen with your concern with the ATF I did receive additional correspondence from the National Rifle Association and National Shooting Sports Foundation, so I know you're here. You want to know what's going to happen now. We will take these issues, all the work begins when I get back to Washington of course, and I will take

these issues, I will personally meet with individuals from the ATF as well as the related associations here that have shared this, certainly clerical errors and other issues that were noted are a concern and certainly there's regulations that must be followed for the safety of all Americans, but at the same time should not impede a going concern trying to do their best to provide you with regulations. So with that we'll certainly follow up with you soon as well as the other commenter's and Mr. [inaudible], thank you again for being here and certainly the EPA will work with your team to address the compliance assistance resources.

And finally, I want to mention I have promoted an excellent product and of course Senator Craig [phonetic] serves as the Chairman of the Veteran's Committee, is doing a terrific job. I said Chairman, I guess [inaudible] now ranking. We're not Chairman now, that's right, but in that Patriot Express, the veterans returning from serving and defending freedom and our homeland across the country need entrepreneurial opportunities and one innovative product is Patriot Express, which is up to \$500,000 for loans and guarantee that's up to 85%, so it's a terrific program for spouses of deceased members of the military as well as reservists and other members of the military community, so I certainly want to thank his support for efforts in that regard and make you all aware of that program. Thank you again for the opportunity to be here. Are there any comments before we close? None? All right, well thank you all.

[END TAPE 1 SIDE A]